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A.F.R.

HIGH COURT OF CHHATTISGARH : BILASPUR

SINGLE BENCH: HON'BLE SHRI S.R. NAYAK, C.J.

Writ Petition No. 1701OF 2006

Petitioner

Smt. Saroj Bai Aadil,
W/o Shri Manohar lal Adil, Aged about 53 Yrs., Caste – Mehar (Schedule Caste), Sarpanch, Gram Panchayat, Tarenga, Block Bhatapara, Tehesil Bhatapara, Distt. Raipur.

Versus

Respondents

1. State of C.G.
Through The Secretary, Department of Panchayat, D.K.S. Bhawan, Raipur (C.G.).

2. Director Panchayat,
Raipur (C.G.)

3. Additional Collector,
Baloda Bazar, District Raipur.

4. Sub Divisional Officer,
Bhatapara, District Raipur.

5. Gyanendra Agarwal,
Upsarpanch, Gram Panchayat Tarenga, Janpad Panchayat Bhatapara, District Raipur.

Present :-

Shri P. Diwakar, Sr. Advocate with Shri Manish Sharma, counsel for the petitioner.

Shri Vinay Harit, Dy. Advocate General, for the State/respondents No.1 to 4.

Shri Kishore Bhaduri, counsel for respondent No.5/caveator.

ORAL ORDER
(13th April, 2006)

This writ petition under Article 226/227 of the Constitution of india is directed against an interlocutory order made by the Director of Panchayat, Raipur, second respondent herein, in a revision preferred by the fifth respondent against the interim order passed by the Additional Collector, Baloda Bazar, District Raipur the third

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respondent herein in favour of the petitioner herein, in an appeal preferred by her against the 'no confidence motion' passed against her in terms of Section 21 of the Chhattisgarh Panchayat Raj and Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as Adhiniyam).

2) The main contention urged in the appeal preferred to the third respondent is that 'no confidence motion' shall not lie against the petitioner in terms of sub-section (3) of Section 21 of the Adhiniyam inasmuch as the petitioner after her election on 18-1-2005 entered the office of the Sarpanch of Gram Panchayat, Tarenga only on 28-2-2005, whereas, notice of no confidence motion is dated 14-2-2006. The Additional Collector while entertaining the appeal preferred by the petitioner granted interim stay of the no confidence motion passed against the petitioner by his order dated 14-3-2006. The fifth respondent who is the Upsarpanch of the same Gram Panchayat i.e Tarenga, it is stated, preferred a revision under Section 21(2) of the Adhiniyam to the second respondent being aggrieved by the above interim order of third respondent. The second respondent while entertaining the said revision by his order dated 21-3-2006 passed the interim order staying operation of the interim order made by the third respondent. The resultant position is that the no confidence motion passed against the petitioner stands. The petitioner being aggrieved by the above interim order of the second respondent has preferred this writ petition.

3) Although several grounds were urged by Shri Diwakar, learned senior counsel appearing for the petitioner, to highlight that the second respondent in granting the impugned interim order staying the interim order granted by the third respondent in favour of the petitioner committed certain irregularities and violation of procedure

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governing the revision, I am of the considered opinion that this is not a case where I should appreciate all those technical arguments and pronounce upon them inasmuch as I do not find any failure of justice in the case. The legality and merit of the no confidence motion passed against the petitioner could be gone into in the main appeal preferred by the petitioner and pending before the third respondent. Suffice it to state that the main ground urged to assail the very initiation of no confidence motion under Section 21 of the Adhiniyam is not available in view of the fact that though initially notice of no confidence motion was issued on 14-2-2006 before completion of one year from the date on which the petitioner entered the office of the Sarpanch, subsequently, that date was changed and no confidence motion was passed only on 10-3-2006, that is to say, only after completion of one year from the date on which the petitioner entered the office of the Sarparanch, Gram Panchayat, Tarenga. In that view of the matter and having regard to the principle that an office holder of electoral post in a local body should enjoy the confidence of his electorate all the time, I am not inclined to step in under Article 226/227 of the Constitution of India and allow the petitioner to continue in the electoral office till her appeal pending before the third respondent is decided on merit. Moreover, it was also brought to my notice that after no confidence motion was passed against the petitioner, the fifth respondent entered the office of Sarpanch on 13-3-2006. That is also another circumstance which weighs with me not to interfere. In the result and in view of the foregoing reasons, the writ petition is dismissed. No costs.

4) The third respondent is, however, directed to dispose of the appeal pending before him on merit without being influenced by this order or any of the observations made therein.

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5) In view of this order, the revision preferred by the fifth respondent before the second respondent does not survive for decision-making and in that view of the matter, the second respondent is directed to remit the original record, if received from the third respondent or the fourth respondent, forthwith to the third respondent in order to facilitate him to hear and dispose of the appeal of the petitioner expeditiously.

Sd/-
Chief Justice

Pathak